

State of Colorado



Bill Owens
Governor

Stacy L. Worthington
Board Director

DPA

Department of Personnel
& Administration

State Personnel Board
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Meeting Minutes August 19, 2003

The State Personnel Board met in public session on Tuesday, August 19, 2003, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Chair Joyce Lottner at approximately 9:00 a.m. In addition to Ms. Lottner, John Zakhem was present in person. Diedra Garcia, who arrived at approximately 9:15 a.m., was also present in person. The following Board member was present via telephone: Elizabeth Salkind. Linda Siderius was absent.

First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, Legal Assistant, were present. Director Stacy L. Worthington was absent.

I. REQUESTS FOR RESIDENCY WAIVERS

A. August 1, 2003 Report on Residency Waivers

There were residency waiver requests during the time period from July 1 to August 1, 2003; however, orders regarding those requests have not yet been issued.

II. PENDING MATTERS - CASES ON REMAND

A. Perry Venard v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2000B114.

Pursuant to the direction of the Colorado Court of Appeals, the Board reconsidered Complainant's motion for a new hearing or remand and the taking of supplemental testimony, originally filed on February 28, 2001, and also reconsidered Complainant's motion to supplement the record, originally filed on April 18, 2001. Mr. Zakhem moved to deny both motions made by Complainant. Ms. Lottner seconded the motion.

The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms. Lottner. Ms. Salkind voted in opposition to the motion. Ms. Siderius was absent and did not participate.

In a separate vote, Mr. Zakhem moved to affirm and to ratify the Order of the State Personnel Board dated September 25, 2001, adopting the findings of fact and conclusions of law of the Administrative Law Judge in the Initial Decision of the Administrative Law Judge. Ms. Lottner seconded the motion.

The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms. Lottner. Ms. Salkind voted in opposition to the motion. Ms. Siderius was absent and did not participate.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

There were no Initial Decisions or Other Final Orders of the Administrative Law Judges or the Director on appeal to the Board this month.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Zeldra Bryant v. Regents of the University of Colorado, University of Colorado Health Science Center, State Personnel Board case number 2003B089.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Director and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius was absent.

- B. Anwar Hussein v. Regents of the University of Colorado, University of Colorado at Colorado Springs, State Personnel Board case number 2002B041.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms. Lottner. Ms. Salkind voted in opposition to the motion. Ms. Siderius was absent.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. Susan Downey v. Community Colleges in Colorado, Arapahoe Community College, State Personnel Board case number 2003B109.

On July 31, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's decision to reduce Complainant's pay was arbitrary, capricious or contrary to rule or law. The ALJ ordered Respondent to reinstate Complainant's salary at her former Administrative Assistant III level retroactive to the date Complainant assumed position #292.

- B. Michael Miranda v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2002B075(C).

On August 1, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's pay reduction and removal of Complainant's position from the Colorado State Patrol Accident Reconstruction Team was not arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

- C. Leon Aragon v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2003B099.

On August 7, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary termination of Complainant's employment was not arbitrary, capricious or contrary to rule or law. The ALJ ordered Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

VI. REVIEW OF THE MINUTES FROM THE JULY 15, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the July 15, 2003 meeting as submitted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius was absent.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 15, 2003 PUBLIC MEETING:

- A. Michael D. Griego v. Department of Local Affairs, Division of Property Taxation, State Personnel Board case number 2003D005.

The Board voted to deny the petition for declaratory order.

- B. Andre Smith v. Regents of the University of Colorado at Denver, Auraria Higher Education Center, State Personnel Board case number 2003B042(C).

The Board voted to remand the matter to the Administrative Law Judge for rehearing on the basis that the burden of proof should not be shifted from one party to the other in the Initial Decision, after a ruling at hearing that the first party bore the burden of proof.

- C. Albert McNeill v. Department of Labor and Employment, State Personnel Board case number 2003G065.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

- D. Lynn Michael, Sandy Henderson, Jaswant Kohli, Deborah Mitchell, Joseph Orndoff, Beverly Suazo, Sarah Williams, Glenna Davis, Dave Knopp, Anthony Bustamante, Joseph Mondragon, Gloria Smith & Rebecca Tygart v. Department of Labor and Employment, Unemployment Insurance and Department of Personnel and Administration, State Personnel Board case number 2003G056.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR - TROY A. EID

Mr. Eid addressed the Board regarding two matters: Civil Service Reform and Total Compensation. With regard to Civil Service Reform, Mr. Eid said that he and the Commission had met with 3000 employees statewide and had requested a 30-day extension of time to October 1, 2003, for presentation of their findings and recommendations to the Governor. The three categories being examined by the Commission are classified employees in higher education, the general system itself, and contracting. Having heard testimony from 100 people, Mr. Eid and the Commission would like to present their report to the Board in October 2003. Following the Commission's work, an implementation committee will be formed by Senator Norma Anderson and Representative Rosemary Marshall to work on a referendum. The draft reports of the Commission are on the homepage of the Department of Personnel and Administration (DPA) for review by employees. Diedra Garcia can also update the Board on the commission's work.

Mr. Eid's report on the second topic, total compensation, was accompanied by a handout composed of his August 1, 2003 letter to Governor Owens and Senator Owen and DPA's Annual Compensation Survey Report for Fiscal Year 2004-2005 with attachments. The requested \$47.5 million is a figure that is intended to begin to close the gap on health insurance with the goal of the state carrying nearly 80% of health insurance premiums for employees. In response to questions from the Board, Mr. Eid stated improving performance management is also a goal of a task force headed up by Jeff Schutt to "rethink" training, conflicts over performance ratings, and the idea of "forced allocations." Mr. Eid ended his presentation by inviting the Board to participate in and work with DPA in achieving the goals set out in its total compensation efforts.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Mandate/Order of Dismissal in Brown v. Department of Public Safety, Colorado Bureau of Investigation, State Personnel Board case number 2002G090, Court of Appeals No. 02CA2414

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. EXECUTIVE SESSION

A. Case Status Report

B. Minutes of the July 2003 Executive Session

Without moving into Executive Session, Mr. Zakhem made a motion to approve the Executive Session Minutes from July 15, 2003, as submitted. Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius was absent.

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Having no more business, the meeting adjourned by consensus.

APPROVED THIS 16th DAY OF SEPTEMBER, 2003.

Joyce Lottner, Chair

John Zakhem, Vice Chair

Diedra Garcia, Member

Elizabeth Salkind, Member